

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change the provisions for additional Medicaid reimbursement for nursing facilities related to the facility's performance as measured by ten indicators of quality care, as directed by 2008 Iowa Acts, Senate File 2425, section 33. This legislation requires the following changes:

- The amount used to calculate the accountability measure add-on is reduced to 80 percent of the sum of the direct care patient-day-weighted median and the non-direct care patient-day-weighted median (down from 100 percent).
- The additional payment for accountability measures will be withheld from the facility's weekly payment remittance and will instead be made through an add-on to each claim at the end of the state fiscal year (June 30).
- A facility's accountability measure add-on will be reduced by 25 percent for each deficiency cited resulting in actual harm to a resident at a scope and severity level of G pursuant to the federal certification guidelines. If the facility fails to cure any level G deficiency cited within the time required by the Department of Inspections and Appeals, the accountability measure add-on will be reduced to \$0.
- A facility will forfeit its accountability measure add-on if the facility receives a deficiency due to instances of actual harm or immediate jeopardy at a scope and severity level of H or higher pursuant to the federal certification guidelines.

In the Centers for Medicare and Medicaid Services' nursing home survey and certification system, a level G deficiency is an isolated instance of actual harm to a resident that does not constitute "immediate jeopardy" to the resident's health or safety. A level H deficiency is a pattern of incidents of actual harm of the same severity. Higher levels include I, widespread instances of actual harm but no immediate jeopardy; J, an isolated instance of immediate jeopardy to a resident's health or safety; K, a pattern of such instances; and L, widespread instances of immediate jeopardy. Survey findings at level F (widespread instances of deficiencies that caused no actual harm but had a potential to cause more than minimal harm) and levels H through L indicate a substandard quality of care if the requirement that is not met falls under federal regulations on resident behavior, quality of life, or quality of care.

In addition, these amendments make a technical change to subrule 81.36(5) to update the name of the Iowa Board of Nursing Home Administrators.

These amendments do not provide for waivers in specified situations, since these are statutory provisions.

The Council on Human Services adopted these amendments July 9, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments merely conform the rules to the provisions in 2008 Iowa Acts, Senate File 2425, section 33, and the Department has no discretion in the payment amounts or timing.

These amendments are also published herein under Notice of Intended Action as **ARC 7017B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4, as amended by 2008 Iowa Acts, Senate File 2425, section 33.

These amendments will become effective September 3, 2008.

The following amendments are adopted.

ITEM 1. Amend paragraph **81.6(16)"g"** as follows:

g. Accountability measures. Additional reimbursement for non-state-owned facilities, based on accountability measures, is available beginning July 1, ~~2002~~ 2008, as provided in this paragraph. Accountability measures are nursing facility characteristics that indicate the quality of care, efficiency, or commitment to care for certain resident populations. These characteristics are objective, measurable,

and, when considered in combination with each other, deemed to have a correlation to a resident's quality of life and care. While any single measure does not ensure the delivery of quality care, a nursing facility's achievement of multiple measures suggests that quality is an essential element in the facility's delivery of resident care.

Additional reimbursement for accountability measures is not available to Medicare-certified hospital-based nursing facilities, state-operated nursing facilities, or special population nursing facilities. Therefore, data from these facility types shall not be used when determining eligibility for or amount of additional reimbursement based on accountability measures.

~~In order for a nursing facility to~~ To qualify for additional Medicaid reimbursement for accountability measures, ~~if a facility~~ must achieve a minimum score of 3 points. The maximum available points are 11. ~~Additional Medicaid reimbursement will be available in the following amounts.~~

<del>0 - 2 points</del>	<del>No additional reimbursement</del>
<del>3 - 4 points</del>	<del>1 percent of the direct care and non-direct care cost component patient-day-weighted medians</del>
<del>5 - 6 points</del>	<del>2 percent of the direct care and non-direct care cost component patient-day-weighted medians</del>
<del>7 or more points</del>	<del>3 percent of the direct care and non-direct care cost component patient-day-weighted medians</del>

The Iowa Medicaid enterprise shall award points based on the ~~following ten~~ measures: described in subparagraphs (1) through (10).

(1) to (10) No change.

(11) Calculation of potential reimbursement. The number of points awarded shall be determined annually on the first day of the state fiscal year and shall be used to calculate the amount of the additional reimbursement for accountability measures as follows:

<u>0 - 2 points</u>	<u>No additional reimbursement</u>
<u>3 - 4 points</u>	<u>1 percent of the direct care plus non-direct care cost component patient-day-weighted medians multiplied by 80 percent, subject to reduction as provided in subparagraph (12)</u>
<u>5 - 6 points</u>	<u>2 percent of the direct care plus non-direct care cost component patient-day-weighted medians multiplied by 80 percent, subject to reduction as provided in subparagraph (12)</u>
<u>7 or more points</u>	<u>3 percent of the direct care plus non-direct care cost component patient-day-weighted medians multiplied by 80 percent, subject to reduction as provided in subparagraph (12)</u>

(12) Reduction of additional reimbursement. The additional reimbursement for accountability measures calculated according to subparagraph (11) shall be subject to reduction as follows:

1. A facility's additional reimbursement shall be reduced by 25 percent for each citation received during the year for a deficiency resulting in actual harm at a scope and severity level of G pursuant to the federal certification guidelines.

2. If the facility fails to cure a cited level G deficiency within the time allowed by the department of inspections and appeals, the additional reimbursement shall be forfeited and the facility shall not receive any accountability measure payment for the year.

3. If a facility receives a citation for a deficiency resulting in actual harm or immediate jeopardy at a scope and severity level of H or higher pursuant to the federal certification guidelines, regardless of the amount of any fines assessed, the additional reimbursement shall be forfeited and the facility shall not receive any accountability measure payment for the year.

(13) Report of deficiencies. The department shall request that the department of inspections and appeals furnish by September 1, December 1, March 1 and August 1 of each year a list of nursing facilities subject to a reduction of the additional reimbursement for accountability measures pursuant to the criteria in subparagraph (12).

(14) Application of additional payments. The additional reimbursement for accountability measures shall be paid to qualifying facilities at the end of the state fiscal year. At the end of each state fiscal year, the Iowa Medicaid enterprise shall:

1. Retroactively adjust each qualifying facility's quarterly rates to the first day of the state fiscal year to include the amount of additional reimbursement for accountability measures calculated according to 81.6(16) "g"; and

2. Reprice all facility claims with dates of service during the period in which an additional reimbursement for accountability measures is effective to reflect the adjusted reimbursement rate.

ITEM 2. Amend subrule 81.36(5) as follows:

**81.36(5)** *Notification of physicians and state board of ~~examiners~~.* If the immediate jeopardy is also substandard quality of care, the department of inspections and appeals shall notify attending physicians and the Iowa board of ~~examiners~~ for nursing home administrators of the finding of substandard quality of care.

[Filed Without Notice 7/9/08, effective 9/3/08]

[Published 7/30/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/30/08.